IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 625 OF 2007

Mr. Ravikumar C. Chadhha ..Appellant

Versus

1. Mrs.Zavinta Aninmohammed Bardai

2. Mr. Lalitkumar S. Chadhha ..Respondents

Shri Avinash Fatangare for the Appellant
Shri A.P. Vanarse for the Respondent No.1

CORAM : S.R.SATHE,J.
DATED : 24/09/2007

P.C. :-

1. Heard finally at admission stage.

2. The Appellant original defendant No.1 in Special Civil Suit No.1171 of 2006 has preferred this appeal against the order passed below Exh-5 whereby defendant Nos.1 and 2 were temporarily restrained from alienating, transferring, conveying, selling the suit property to third party till the disposal of the suit. For the sake of convenience hereafter the parties shall be referred to as 'Plaintiff' and defendants'.

3. The brief facts giving rise to this appeal are as under :-

The suit flat admeasuring 860 sq.fts. situated in final plot No.18 Hindustan Estate is owned by defendants. According to Plaintiff, he approached the defendants with Narayan Adhav on 25/04/2006 and after discussion defendants agreed to sale suit flat to Plaintiff for consideration of Rs.18 lacs. Plaintiff paid two cheques of Rs.25,000/- and Rs.26,000/- respectively in favour of defendant Nos.1 and 2 on the same day by way of earnest money and the defendants issued receipt (visar pawati). The Plaintiff thereafter, even forwarded draft of conveyance deed and with the consent of the defendants issued a public notice in daily newspaper “Prabhat” on 20/07/2006 calling upon public at large to register their objection if any for the sale transaction. The Plaintiff did not receive any objection. However, defendants failed to execute the sale deed. On the contrary, Plaintiff came to known that defendants were intending to sale the property to some other persons. Hence, Plaintiff filed the present suit for specific performance of the agreement to sale the suit property on 11/08/2006.

4. The Plaintiff submitted application Exh-5 and prayed for temporary injunction against the defendants

restraining them from creating any third party interest in the suit property till the disposal of the suit. Defendant No.2 filed his Written Statement and opposed the suit claim and the application. He contended that the description of the suit property is not correct. According to him, he is co-owner of the suit property and he is in actual possession of the same and the defendant No.1 had no right to dispose of the suit property on his own. He also contended that Plaintiff never approached him and he had never agreed to sale the suit flat to Plaintiff as alleged. He also denied to have received amount of Rs.25,000/-. He also denied to have executed any receipt in favour of Plaintiff. He, therefore, prayed for the dismissal of the suit as well as application.

5. After hearing the arguments of both the learned Advocates and considering the documents produced by the parties the learned 9th Joint Civil Judge, Senior Division Pune came to the conclusion that Plaintiff has made out a prima facie case to show that defendants have agreed to sale the suit land to Plaintiff and Plaintiff was and is ready and willing to perform his part of the contract but the defendants are committing breach. He, therefore, issued temporary injunction

against the defendants as mentioned above.

6. The above mentioned order is challenged by the defendants in the present appeal. In this appeal before me, learned Advocate for the Appellant-original defendants has urged 2 points. Firstly, he submitted that the learned Trial Judge has wrongly held that Plaintiff has made out a prima facie case. Secondly, he canvassed before me that the learned Trial Judge ought to have taken into consideration the fact that in the main suit Plaintiff had not at all claimed any permanent injunction and as such there was no question of granting temporary injunction in favour of Plaintiff. He, therefore submitted that the order passed by the learned Trial Judge is not correct and the same is in fact causing irreparable hardship and loss to the defendants. The learned Advocate therefore submitted that the appeal be allowed and the Plaintiff's application for temporary injunction be rejected. As against this, the learned Advocate for the Plaintiff supported the order passed by the learned Trial Judge.

7. It is not in dispute that the defendants are the owners of the suit flat. It is the case of the

Plaintiff that he agreed to purchase the suit flat for Rs.18 lakhs. However, according to him, the defendant had told him that the conveyance deed should be of Rs.12 lakhs and the amount of Rs.6 lakhs be paid in cash. According to Plaintiff, the defendants even executed receipt for having received earnest amount of Rs.51,000/-. Though, defendant No.2 has denied having received the amount and executed receipt to that effect it appears that Plaintiff has produced the said receipts dated 25/04/2006. Though, apperantly the said receipts are not in the nature of agreement, prima facie it does appear that there was some transaction between Plaintiff and defendants as alleged. It is pertinent to note that Plaintiff had even issued public notice regarding proposed transaction of sale by defendants. If really no such talk with regard to purchase and sale of property would have taken place, there was no need for Plaintiff to issue such public notice. Besides this, it has come on record that the society in which the suit flat is situated had in fact issued no objection certificate at the request of defendant Nos.1 and 2 and allowed them to sale suit flat to Plaintiff. So, this is an important piece of evidence which prima facie goes to show that agreement with regard to sale of suit flat must have been entered

into by the defendants in favour of Plaintiff.

8. Much is made about the fact that the Plaintiff has stated that though flat was to be purchased for 18 lacs the defendant had told him to pay Rs.6 lakhs in cash and execute the documents for Rs.12 lakhs only. It was therefore, argued on behalf of defendant that such transaction is opposed by the public policy and as such it must be held that the alleged agreement is void and can not be enforced in law. However, at this stage, it is not necessary to go into the said issue. It is pertinent to note that in the instant case, though document agreed to be executed was for Rs.12 lakhs Plaintiff has submitted that the agreed purchase price is Rs.18 lakhs. This statement is in fact against the interest of the Plaintiff but he has frankly stated that the defendant had insisted that he should pay amount of Rs.6 lakhs in cash and the document should be executed only for Rs.12 lakhs. So, merely because Plaintiff has come out with such case we can not came to the conclusion that Plaintiff is not entitled for temporary injunction. Plaintiff has also stated that defendants are trying to dispose of the property and as such, it is necessary to restrain them from disposing the suit property till the disposal of the suit. It is

only for this purpose Plaintiff has filed the present application.

9. The learned Advocate for the defendants argued before me that the relief which is not claimed in the suit can not be granted by way of temporary relief. According to him, relief in interlocutory proceedings can not be granted beyond the scope of the suit. For this proposition, he has placed reliance on a case **Sree Jain Swetambar Terapanthi Vid (S) Versus Phudan Singh and others (1999) 2 Supreme Court Cases 377**. I have carefully gone through the said authority. The facts of the said case and the facts of the case in hand are quite different. In that case, interim relief that was sought was of a different nature and it has no direct bearing on the relief claimed in the suit. While in the instant case it must be noted that Plaintiff has filed the suit for specific performance of an agreement to sale. Naturally, in such suit, there is no necessity for him to ask for permanent injunction. However, with a view that Plaintiff's interest and the suit property should be protected and preserved till the decision of the suit Plaintiff has filed an application for temporary injunction restraining defendants from creating third party interest in the suit property till

the disposal of the suit. Learned Advocate for the defendants has also placed reliance on other cases such as **2001 AIHC 1461 (Gujarat High Court), AIR 1965 MADRAS 188 (V 52 C 65) and (2006) 8 Supreme Court Cases 367** to substantiate the above mentioned proposition. However, the facts of those cases are also different and as such the same are of no use to the present defendants.

10. While considering the above mentioned objection of the learned Advocate for the defendants it is necessary to see the purpose and the object of Order-39, Rule-1 and 2. The purpose of the said provision is to preserve and to protect the interest in the property in suit and to protect the interests of the parties by preserving certain properties till the final disposal of the case. So, when prima facie it appears that the defendants have agreed to sale the suit flat to Plaintiff and Plaintiff has also paid amount of Rs.51,000/- by way of earnest money and has shown readiness and willingness to purchase the property, with a view to protect the interest of the Plaintiffs and to preserve the property, it is necessary to grant temporary injunction in the instant case. Otherwise, if injunction is not granted and defendants are allowed to sale suit property the very purpose of the suit will be

frustrated. So, considering the nature of the suit and the interim relief claimed by the Plaintiff it can not be said that authorities cited by the learned Advocate for the defendants are applicable to the facts of the present suit.

11. Thus, from the facts and circumstances of the case and position of law, I think that the learned Trial Judge has rightly held that Plaintiff has made out a prima facie case for granting temporary injunction and the balance of convenience is also in his favour.

12. It is well settled that when it appears that the discretionary relief granted by the learned Trial Judge is legal and correct and such view is possible, then the Appellate Court should not interfere with the said discretionary order. So, I am not inclined to interfere with the order passed by the learned Trial Judge.

13. In this view of the matter, there is no substance in this appeal.

Hence, appeal is dismissed with costs.

(S.R. SATHE,J.)